

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
Western Division**

TRUE VALUE COMPANY, L.L.C. and
T V COOPERATIVE COMPANY,

Case No.: 3:20-cv-50083
Honorable Philip G. Reinhard

Plaintiff,

vs.

INTERNATIONAL HARDWARE SUPPLIES, LLC
d/b/a TRUE VALUE OF BROWARD and
JOSE ZAMBRANO,

Defendants.

_____ /

DEFENDANTS' AMENDED¹ NOTICE OF REMOVAL

Defendants, INTERNATIONAL HARDWARE SUPPLIES, LLC d/b/a TRUE VALUE OF BROWARD and JOSE ZAMBRANO (“Defendants”), by and through the undersigned counsel, and pursuant to 28 U.S.C. § 1441(a) and 1446, give notice of removal of this action from the Circuit Court of the Twenty-Second Judicial Circuit of Illinois, in and for McHenry County, Illinois, to the United States District Court for the Northern District of Illinois and states as follows:

1. Defendants exercise their rights under 28 U.S.C. § 1441 *et seq.* to remove this action from the Circuit Court of the Twenty-Second Judicial Circuit of Illinois, in and for McHenry County, Illinois, now pending as the certain case styled *TRUE VALUE COMPANY, L.L.C. and T V COOPERATIVE COMPANY* (“Plaintiffs”) v. *INTERNATIONAL HARDWARE SUPPLIES, LLC d/b/a TRUE VALUE OF BROWARD and JOSE ZAMBRANO*, Case No. 19 LA 000387, to the United States District Court for the Northern District of Illinois.

¹ This amendment is made pursuant to this Court’s March 4, 2020 order (DE #4).

Timely Notice of Removal

2. On February 3, 2020, Defendant² were served with Plaintiffs' complaint ("the Complaint"), setting forth a count for breach of contract, a count for account state, and a count for breach of personal guaranty. *See Exhibit A* (Alias Summons and Complaint). Defendants' original Notice of Removal (DE 3) was timely filed on March 3, 2020 within 30 days of formal service upon Defendant through service of a copy of the initial pleading setting forth a claim for relief, pursuant to 28 U.S.C. § 1446(b), and within one year of the filing of the lawsuit.

Venue

3. Venue is proper in this Court because the United States District Court for the Northern District of Illinois is the federal judicial district embracing the Circuit Court of the Twenty-Second Judicial Circuit of Illinois, in and for McHenry County, Illinois, where the subject state court action was filed.

Jurisdiction

4. This Court has jurisdiction. The state court action is a civil action which falls under this Court's original jurisdiction pursuant to 28 U.S.C. § 1332(a) because the citizenship of the Plaintiffs and the Defendants are diverse, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. Defendants are therefore entitled to remove this action pursuant to 28 U.S.C. § 1441.

² In fact, only Defendant Jose Zambrano was served in his individual capacity, but notwithstanding that, Defendant INTERNATIONAL HARDWARE SUPPLIES, LLC also consents and joins in this Notice solely for purposes of the jurisdiction arguments now before this Court, while reserving and intending to assert all challenges and arguments, pursuant to 28 U.S.C.A. § 1441(e)(6), in opposition to the Plaintiffs' improperly and inconveniently chosen venue in Illinois, as well as on the basis of improper and insufficient service of process.

Complete Diversity Exists

5. At the time of the filing of the Complaint, there was complete diversity of citizenship between the Plaintiffs and Defendants. A party seeking to remove a case on the basis of diversity jurisdiction bears the burden to prove by a preponderance of the evidence the state citizenship of the parties. *See Tooley v. Washington Group Intern.*, 2009 WL 102926, at *4 (C.D. Ill. Jan. 13, 2009).

Plaintiffs' Citizenship

6. According to the Complaint, “Plaintiff True Value Company, L.L.C. is a Delaware limited liability company, formerly known as True Value Company, and qualified to do business in Illinois with offices in Harvard, McHenry County, Illinois.” *See Exhibit A* (Complaint at ¶ 4). As this Court ruled, “Limited liability companies do not have citizenship for diversity purposes. The controlling citizenship is that of their members. To properly plead the citizenship of a limited liability company each member and the citizenship of each member must be identified. *Meyerson v. Showboat Marina Casino Partnership*, 312 F.3d. 318, 321 (7th Cir. 2002).” (DE #4). The state of Delaware does not require that its limited liability companies register the identities or locations of its members.³ After a diligent search of publicly available records, Defendants are not able to ascertain the identities or locations of the Plaintiff’s members. The undersigned has spoken with Salvador Carranza, Esq., counsel for Plaintiffs, who stated that the Plaintiff’s membership structure is intricate with numerous entities and sub entities, but that notwithstanding, he does not believe that that there exists a diversity-destroying entity within that structure as it relates to the current Defendants.

³ See *Delaware Limited Liability Company Act*, section 18-201 at <https://delcode.delaware.gov/title6/c018/sc02/index.shtml>.

7. Defendants hereby respectfully request a brief extension of time to promptly and expeditiously conduct limited jurisdictional discovery to ascertain and completely allege the Plaintiff L.L.C.'s members. It would be appropriate for this Court to grant that request. See *Indycar LLC v. Bos. Grand Prix, LLC*, No., 2016 U.S. Dist. LEXIS 80177, at *2 (S.D. Ind. June 20, 2016) citing *Meyerson v. Harrah's E. Chi. Casino*, 299 F.3d 616, 617 (7th Cir. 2002). See also *Preferred Sands of Wis., LLC v. Momentive Specialty Chems., Inc.*, 2013 U.S. Dist. LEXIS 30143, at *4 (W.D. Wis. Mar. 6, 2013) citing *Smart v. Local 702 Int'l Bhd. of Elec. Workers*, 562 F.3d 798, 802-03 (7th Cir. 2009).

8. According to the Complaint, "Plaintiff TV Cooperative Company is a Delaware corporation operating as a cooperative, with a registered office located in Wilmington, New Castle, Delaware." See **Exhibit A** (Complaint at ¶ 5). Upon information and belief, Plaintiff TV Cooperative Company has its principal place of business in Illinois with its executive headquarters in Chicago. "For diversity purposes, a corporation is a citizen of both the state where it is incorporated and the state where it has its principal place of business." *MacGinnitie v. Hobbs Group, LLC*, 420 F.3d 1234, 1239 (11th Cir. 2005). Therefore, Plaintiff TV Cooperative Company is a citizen of Delaware and Illinois.

Defendants' Citizenship

9. Defendant Jose Zambrano is an individual who at all times material hereto resides in Florida and the Bolivarian Republic of Venezuela, and is a citizen of only Venezuela.

10. Defendant INTERNATIONAL HARDWARE SUPPLIES, LLC d/b/a TRUE VALUE OF BROWARD is a Florida Limited Liability Company with a principal place of business at 9661 W 35 CT, Hialeah, Florida 33018. Its only member is Defendant Jose Zambrano.

Therefore, Defendant INTERNATIONAL HARDWARE SUPPLIES, LLC is a citizen of Venezuela.

11. Defendants' citizenship creates alienage jurisdiction pursuant to 28 U.S.C.S. § 1332. See *Ashenden v. Lloyd's of London*, 934 F. Supp. 992, 993 (N.D. Ill. 1996).

12. Accordingly, diversity of citizenship exists between the Plaintiffs and Defendants.

Amount in Controversy

13. Throughout the Complaint and within the Alias Summons, Plaintiffs seek to recover at least \$382,039.07 from Defendants. See **Exhibit A**. Accordingly, this amount satisfies the amount in controversy requirement for diversity jurisdiction.

Compliance with 28 U.S.C. § 1446

14. Defendant files with this amended notice of removal, copies of all process, pleadings, and orders served on it, and such other papers that are exhibits, as required by 28 U.S.C. §1446(a), and any applicable Local Rules of this Court, which are included in **Exhibit A** attached hereto.

15. Pursuant to 28 U.S.C. §1446(d), Defendant has filed this Amended Notice of Removal with this Court and is serving a copy of this Notice of Removal upon counsel for Plaintiffs.

Dated: **June 9, 2020**

Respectfully submitted,

/s/ Fred Viera

Fred Viera

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(appearing pro hac vice)

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INTERNATIONAL HARDWARE

SUPPLIES, LLC d/b/a TRUE VALUE OF

BROWARD and JOSE ZAMBRANO

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on **June 9, 2020**, we electronically filed the foregoing with the Clerk of Court using the CM/ECF system. We also certify that a true and correct copy of the foregoing was served by e-mail on this date on all counsel or parties of record on the Service List below.

By: /s/ Fred Viera

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